IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

R.S.A. No. 5369 of 2003 (O&M)
Date of Decision : 19.11.2007

Charan Dass & Ors.

.....Appellants

Versus

Nikki & Ors.

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr.Paramjit Batta, Advocate
for the appellants.

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VINOD K. SHARMA, J. (ORAL)

C.M. No. 13495-C of 2003

This is an application for condoning the delay of 546 days in refiling the appeal.

For the rea sons stated in the application, the delay in refiling the appeal is condoned.

C.M. stands allowed.

R.S.A. No. 5369 of 2003

This regular second appeal has been filed against the judgments and decrees passed by the learned Courts below vide which suit filed by the plaintiff respondents No. 2 to 7 for declaration and permanent injunction has been ordered to be decreed qua injunction only to the effect that the defendants No. 2 to 9 have been permitted to take possession over the land purchased by them in due course of law.

The case of the plaintiff appellants was that they were owner in possession of the property in dispute and, therefore, they sought declaration

and injunction. However, the learned Courts below on the basis of evidence brought on record, have recorded a concurrent finding of fact that the plaintiff respondents No. 2 to 7 have failed to prove that they were owners in possession of the property in dispute. However, the revenue record brought on record showed that it was the plaintiffs who were in possession of the property. The possession was sought to be disputed by the plaintiff appellant by placing reliance on Canal girdawaris as well as recital in the sale deed showing that appellant defendants were put in possession over the property in dispute.

The learned Courts below rejected the Canal Girdawaries as they were contrary to the jamabandi produced on record which showed the possession of the plaintiffs over the suit property. It may also be noticed here that the plaintiffs purchased from the joint Khewat of the defendants and it could not be said that possession of share could be handed over to the defendant at the time of purchase of property as is sought to be claimed. Therefore, the learned Courts below were justified in recording a concurrent finding of fact that the plaintiff/respondents were in possession, therefore, they could not be dispossessed except following due process of law.

No question of law muchless substantial question of law arises for consideration in this regular second appeal.

Dismissed.

19.11.2007 **(VINOD K. SHARMA)**
'sp' **JUDGE**